

the storage in different kinds of cooperage or the treatment of a portion of the spirits;

(f) The use (except as authorized for production or storage operations as provided by 27 CFR part 19) of any physical or chemical process or any apparatus which accelerates the maturing of the spirits;

(g) The steeping or soaking of fruits, berries, aromatic herbs, roots, seeds, etc., in spirits or wines;

(h) The artificial carbonating of spirits;

(i) The blending in Puerto Rico of spirits with any liquors manufactured outside of Puerto Rico;

(j) The production of gin by—

(1) Redistillation over juniper berries and other natural aromatics, or the extracted oils of such, of spirits distilled at or above 190 degrees of proof, free from impurities, including spirits of such a nature recovered by redistillation of imperfect gin spirits; and

(2) Mixing gin with other spirits;

(k) The treatment of gin by—

(1) Addition or abstraction of any substance or material other than pure water after redistillation in a manner that would change its class and type designation; and

(2) Addition of any substance or material other than juniper berries or other natural aromatics, or the extracted oils of such, or pure water to the spirits, before or during redistillation, in a manner that would change its class and type designation;

(l) The production of vodka by—

(1) Treatment of neutral spirits with not less than one ounce of activated carbon per 100 wine gallons of spirits;

(2) Redistillation of pure spirits so as to be without distinctive character, aroma, taste, or color;

(3) Mixing with other spirits or with any other substance or material except pure water, after production; and

(m) The recovery of spirits by redistillation from distilled spirits products containing other alcoholic ingredients and from spirits which have previously been entered for deposit. However, no formula shall be required for spirits redistilled into any type of neutral spirits other than vodka or spirits redistilled at less than 190 degrees of proof which lack the taste, aroma and other

characteristics generally attributed to whisky, brandy, rum, or gin, and are designated as “Spirits,” preceded or followed by a word or phrase descriptive of the material from which produced. Such spirits redistilled on or after July 1, 1972, may not be designated “Spirits Grain” or “Grain Spirits.”

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. ATF-198, 50 FR 8463, Mar. 1, 1985, as amended by T.D. ATF-259, 52 FR 41423, Oct. 28, 1987]

§5.28 Adoption of predecessor's formulas.

The adoption by a successor of approved Forms 5110.38 (27-B Supplemental) shall be in the form of an application filed with the appropriate TTB officer. The application shall list the formulas for adoption by:

- (a) Formula number,
- (b) Name of product, and
- (c) Date of approval.

The application shall clearly show that the predecessor has authorized the use of his previously approved formulas by the successor.

Subpart D—Labeling Requirements for Distilled Spirits

§5.31 General.

(a) *Application.* No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any distilled spirits in bottles, unless such bottles are marked, branded, labeled, or packaged, in conformity with §§5.31 through 5.42.

(b) *Alteration of labels.* It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label on distilled spirits held for sale in interstate or foreign commerce or after shipment therein, except:

(1) As authorized by Federal law;

(2) When an additional labeling or re-labeling of bottled distilled spirits is

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accomplished with labels covered by certificates of label approval which comply with the requirements of this part and with State law;

(3) That there may be added to the bottle, after removal from customs custody, or prior to or after removal from bonded premises, without application for permission to relabel, a label identifying the wholesale or retail distributor thereof or identifying the purchaser or consumer, and containing no references whatever to the characteristics of the product.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-62, 44 FR 71621, Dec. 11, 1979; T.D. ATF-198, 50 FR 8464, Mar. 1, 1985]

§ 5.32 Mandatory label information.

There shall be stated:

(a) On the brand label:

(1) Brand name.

(2) Class and type, in accordance with § 5.35.

(3) Alcoholic content, in accordance with § 5.37.

(4) In the case of distilled spirits packaged in containers for which no standard of fill is prescribed in § 5.47, net contents in accordance with § 5.38(b) or § 5.38a(b)(2).

(b) On the brand label or on a back label:

(1) Name and address, in accordance with § 5.36.

(2) In the case of imported spirits, the country of origin, in accordance with § 5.36.

(3) In the case of distilled spirits packaged in containers conforming to the standards of fill prescribed in § 5.47 or § 5.47a, net contents in accordance with § 5.38(a), § 5.38a(a), or § 5.38a(b)(1).

(4) Coloring or flavoring, in accordance with § 5.39.

(5) A statement that the product contains FD&C Yellow No. 5, where that coloring material is used in a product bottled on or after October 6, 1984.

(6) [Reserved]

(7) *Declaration of sulfites.* There shall be stated, the statement "Contains sulfites" or "Contains (a) sulfiting agent(s)" or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is de-

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tected at a level of 10 or more parts per million, measured as total sulfur dioxide. The sulfite declaration may appear on a strip label or neck label in lieu of appearing on the front or back label. The provisions of this paragraph shall apply to:

(i) Any certificate of label approval issued on or after January 9, 1987;

(ii) Any distilled spirits bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and,

(iii) Any distilled spirits removed on or after January 9, 1988.

(8) Percentage of neutral spirits and name of commodity from which distilled, or in the case of continuously distilled neutral spirits or gin, the name of the commodity only, in accordance with § 5.39.

(9) A statement of age or age and percentage, when required, in accordance with § 5.40.

(10) State of distillation of domestic types of whisky and straight whisky, except light whisky and blends, in accordance with § 5.36.

(c) In the case of a container which has been excepted under the provisions of § 5.46(d), the information required to appear on the "brand label," as defined, may appear elsewhere on such container if it can be demonstrated that the container cannot reasonably be so designed that the required brand label can be properly affixed.

(Paragraph (b)(7) approved by the Office of Management and Budget under Control No. 1512-0469)

[T.D. 7020, 34 FR 20337, Dec. 30, 1969]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 5.32, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 5.32a Voluntary disclosure of major food allergens.

(a) *Definitions.* For purposes of this section the following terms have the meanings indicated.

(1) *Major food allergen.* Major food allergen means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp),

tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived.* Name of the food source from which each major food allergen is derived means the name of the food as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts);

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names “egg” and “peanuts”, as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the term “soy”, soybean”, or “soya” may be used instead of “soybeans”.

(b) *Voluntary labeling standards.* Major food allergens (defined in paragraph (a)(1) of this section) used in the production of a distilled spirit product may, on a voluntary basis, be declared on any label affixed to the container. However, if any one major food allergen is voluntarily declared, all major food allergens used in production of the distilled spirit product, including major food allergens used as fining or processing agents, must be declared, except when covered by a petition for exemption approved by the appropriate TTB officer under § 5.32b. The major food allergens declaration must consist of the word “Contains” followed by a

colon and the name of the food source from which each major food allergen is derived (for example, “Contains: egg”).

(c) *Cross reference.* For mandatory labeling requirements applicable to distilled spirits products containing FD&C Yellow No. 5 and sulfites, see §§ 5.32(b)(5) and (7).

[T.D. TTB-53, 71 FR 42268, July 26, 2006]

§ 5.32b Petitions for exemption from major food allergen labeling.

(a) *Submission of petition.* Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of § 5.32a. The burden is on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 5.32a(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute a final agency action.

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(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition for purposes of the time frames for decision set forth in paragraph (b) of this section.

(d) *Availability of information.*—(1) *General.* TTB will promptly post to its public Web site, <http://www.ttb.gov>, all petitions received under this section as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB Web site will be available to the public pursuant to 5 U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

- (i) The request must be in writing;
- (ii) The request must clearly identify the information to be kept confidential;
- (iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;
- (iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and
- (v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a

trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

[T.D. TTB–53, 71 FR 42268, July 26, 2006]

§ 5.33 Additional requirements.

(a) *Contrasting background.* Labels shall be so designed that the statements required by this subpart are readily legible under ordinary conditions, and such statements shall be on a contrasting background.

(b) *Location of statements and size of type.* (1) Statements required by this subpart, except brand names, shall appear generally parallel to the base on which the bottle rests as it is designed to be displayed or shall be otherwise equally conspicuous.

(2) Statements required by this subpart, except brand names and the declaration of sulfites in § 5.32(b)(7), shall be separate and apart from any other descriptive or explanatory matters.

(3) If not separate and apart from other descriptive or explanatory matter printed on the label, the statement declaring the presence of sulfites shall be of a size substantially more conspicuous than surrounding nonmandatory labeling information.

(4) Statements of the type of distilled spirits shall be as conspicuous as the statement of the class to which it refers, and in direct conjunction therewith.

(5) Statements required by this subpart, except brand names, shall be in script, type, or printing not smaller than 2 millimeters (or 8-point gothic until January 1, 1983), except that, in the case of labels on bottles of 200 milliliters or less capacity, such script, type, or printing shall not be smaller than 1 millimeter (or 6-point gothic until January 1, 1983).

(6) When net contents are stated either in metric measures or in both metric and U.S. fluid measures, statements required by the subpart, except brand names, shall be in script, type, or printing not smaller than 2 millimeters (or 8-point gothic until January 1, 1983), except that, in the case of labels on bottles of 200 milliliters or less capacity such script, type, or printing shall not be smaller than 1 millimeter

(or 6-point gothic until January 1, 1983).

(c) *English language.* The requirements of this subpart shall be stated in the English language, except that the brand name need not be in English, and for products bottled for consumption within Puerto Rico the required information may be stated in the Spanish language if the net contents and, if the product is an imitation, the word “imitation” are also stated in the English language.

(d) *Location of label.* Labels shall not obscure government stamps or be obscured thereby. Labels shall not obscure any markings or information required to be permanently marked in the bottle by other U.S. Treasury Department regulations.

(e) *Labels firmly affixed.* Labels which are not an integral part of the bottle shall be affixed to bottles in such manner that they cannot be removed without thorough application of water or other solvents.

(f) *Additional information on labels.* Labels may contain information other than the mandatory label information required by this subpart if the information does not conflict with, or in any manner qualify, statements required by this part.

(g) *Contents of bottles.* A complete and accurate statement of the contents of the bottles to which labels are to be or have been affixed shall be submitted, on request, to the appropriate TTB officer.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-66, 45 FR 40548, June 13, 1980; T.D. ATF-94, 46 FR 55096, Nov. 6, 1981; T.D. ATF-236, 51 FR 34710, Sept. 30, 1986; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§ 5.34 Brand names.

(a) *Misleading brand names.* No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the appropriate TTB officer finds that such brand name (when appropriately qualified if required) conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(b) *Trade name of foreign origin.* Paragraph (a) of this section does not prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the U.S. Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least 5 years immediately preceding August 29, 1935: *Provided*, That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

§ 5.35 Class and type.

(a) *Designation of product.* The class and type of distilled spirits shall be stated in conformity with § 5.22 if defined therein. In all other instances the product shall be designated in accordance with trade and consumer understanding thereof, or, if no such understanding exists, by a distinctive or fanciful name, and in either case (except as provided in paragraph (b)(2) of this section) followed by a truthful and adequate statement of composition. The word “cordial” or “liqueur” need not be stated in the case of cordials and liqueurs unless the appropriate TTB officer finds such word is necessary to clearly indicate that the product is a cordial or liqueur.

(b) *Products designed in accordance with trade and consumer understanding.* In the case of products designated in accordance with trade and consumer understanding:

(1) A statement of the classes and types of distilled spirits used in the manufacture thereof shall be deemed a sufficient statement of composition in the case of highballs, cocktails, and similar prepared specialties when the designation adequately indicates to the consumer the general character of the product.

(2) No statement of composition is required if the designation through general and established usage adequately indicates to the consumer the composition of the product.

A product shall not bear a designation which indicates it contains a class or

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type of distilled spirits unless the distilled spirits therein conform to such class and type.

(c) *Origin of whiskies in mixtures.* In the case of any of the types of whisky defined in § 5.22(b), Class 2, which contains any whisky or whiskies produced in a country other than that indicated by the type designation, there shall be stated on the brand label the percentage of such whisky and the country or origin thereof. In the case of mixtures of whisky, not conforming to any type designation in § 5.22(b), Class 2, the components of which were distilled in more than one country, there shall be stated in direct conjunction with the class designation “whisky” a truthful and adequate statement of the composition of the product.

(d) *Whisky manufactured in Scotland, Ireland, or Canada.* All whisky manufactured in Scotland, Ireland, or Canada, shall be deemed to be Scotch, Irish, or Canadian whisky, and shall be so designated, in conformity with § 5.22(b) (7), (8), and (9), unless the application of such designation to the particular product will result in consumer deception, or unless such a product is not entitled to such designation under the laws of the country in which manufactured.

(e) *Cordials and liqueurs.* The alcoholic components of cordials and liqueurs may, but need not, be stated on labels.

§ 5.36 Name and address.

(a) *“Bottled by”.* (1) On labels of domestic distilled spirits there shall be stated the phrase “bottled by”, “packed by”, or “filled by”, immediately followed by the name (or trade name) of the bottler and the place where such distilled spirits are bottled. If the bottler is the actual bona fide operator of more than one distilled spirits plant engaged in bottling operations, there may, in addition, be stated immediately following the name (or trade name) of such bottler the addresses of such other plants.

(2) Where distilled spirits are bottled by or for the distiller thereof, there may be stated, in lieu of the phrase “bottled by”, “packed by”, or “filled by”, followed by the bottler’s name (or trade name) and address, the phrase

“distilled by”, followed by the name, or the trade name under which the particular spirits were distilled, or (except in the case of distilled spirits labeled as bottled in bond) any trade name shown on the distiller’s permit (covering the premises where the particular spirits were distilled), and the address (or addresses) of the distiller.

(3) Where “straight whiskies” of the same type which have been produced in the same State by two or more different distillers are combined (either at time of bottling or at a warehouseman’s bonded premises for further storage) and subsequently bottled and labeled as “straight whisky,” such “straight whisky” shall be labeled in accordance with the requirements of paragraph (a)(1) of this section. Where such “straight whisky” is bottled by or for the distillers thereof, there may be stated on the label, in lieu of the requirements of paragraph (a)(1) of this section, the phrase “distilled by,” followed by the names (or trade names) of the different distillers who distilled a portion of the “straight whisky,” the addresses of the distilleries where the “straight whisky” was distilled, and the percentage of “straight whisky” distilled by each distiller (with a tolerance of plus or minus 2 percent). In the case where “straight whisky” is made up of a mixture of “straight whiskies” of the same type from two or more different distilleries of the same proprietor located within the same State, and where the “straight whisky” is bottled by or for the proprietor thereof, such “straight whisky” may be labeled, in lieu of the requirements of paragraph (a)(1) of the this section, with the phrase “distilled by” followed by the name (or trade name) of the proprietor and the addresses of the different distilleries which distilled a portion of the “straight whisky.”

(4) Where distilled spirits are bottled by or for the rectifier thereof, there may be stated, in lieu of the phrase “bottled by”, “packed by”, or “filled by”, followed by the bottler’s name (or trade name) and address, the phrases “blended by”, “made by”, “prepared by”, “manufactured by”, or “produced by” (whichever may be appropriate to the act of rectification involved) followed by the name (or trade name), and

the address (or addresses) of the rectifier.

(5) In addition to the requirements of paragraphs (a)(1) and (a)(2) of this paragraph, the labels of bottled in bond spirits shall bear the real name of the distillery or the trade name under which the distillery produced and warehoused the spirits, the number of the plant in which produced and the number of the plant in which bottled.

(6) The label may state the address of the proprietor's principal place of business in lieu of the place where the bottling, distilling or rectification operation occurred, if the address where the operation occurred is indicated by printing, coding, or other markings, on the label or on the bottle.

(b) *"Imported by"*. (1) On labels of imported distilled spirits, bottled prior to importation, there shall be stated the words "imported by", "imported exclusively by", or a similar appropriate phrase, and immediately thereafter the name of the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person.

(2) On labels of imported distilled spirits bottled after importation there shall be stated:

(i) The name of the bottler and place where bottled, immediately preceded by the words "bottled by", "packed by", or "filled by"; or

(ii) The name of the bottler and place where bottled, immediately preceded by the words "bottled by", "packed by", or "filled by" and in conjunction therewith the name and address of the person responsible for the importation, in the manner prescribed in paragraph (b)(1) of this section; or

(iii) The name and principal place of business in the United States of the person responsible for the importation, if the spirits are bottled for such person, immediately preceded by the phrase "imported by and bottled (packed), (filled) in the United States for" (or a similar appropriate phrase); or,

(iv) In the case of imported distilled spirits bottled after importation by the person responsible for the importation, the words "imported and bottled

(packed), (filled) by", "imported and bottled (packed), (filled) exclusively by", or a similar appropriate phrase, and immediately thereafter the name of such person and the address of the place where bottled or the address of such person's principal place of business.

(c) *Post office address*. The "place" stated shall be the post office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, firm or corporation, unless (1) such person or retailer is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and (2) the label also contains in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address.

(d) *State of distillation*. Except in the case of "light whisky", "blended light whisky", "blended whisky", "a blend of straight whiskies", or "spirit whisky", the State of distillation shall be shown on the label of any whisky produced in the United States if the whisky is not distilled in the State given in the address on the brand label. The appropriate TTB officer may, however, require the State of distillation to be shown on the label or he may permit such other labeling as may be necessary to negate any misleading or deceptive impression which might be created as to the actual State of distillation. In the case of "light whisky", as defined in § 5.22(b)(3), the State of distillation shall not appear in any manner on any label, when the appropriate TTB officer finds such State is associated by consumers with an American type whisky, except as a part of a name and address as set forth in paragraph (a) of this section.

(e) *Country of origin*. On labels of imported distilled spirits there shall be stated the country of origin in substantially the following form "Product of _____", the blank to be filled in with the name of the country of origin.

(f) *Trade names*. The trade name of any permittee appearing on any label

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must be identical to the trade name listed on the permittee's basic permit.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-62, 44 FR 71621, Dec. 11, 1979; T.D. ATF-198, 50 FR 8464, Mar. 1, 1985; T.D. ATF-259, 52 FR 41423, Oct. 28, 1987; T.D. ATF-260, 52 FR 42101, Nov. 3, 1987; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§ 5.37 Alcohol content.

(a) *Statements*—(1) *Mandatory statement*. The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. Products such as “Rock and Rye, or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: “Bottled at _____ percent-alcohol-by-volume.”

(2) *Optional statement*. In addition, the label may also state the alcohol content in degrees of proof if this information appears in direct conjunction (i.e. with no intervening material) with the statement expressed in percent-alcohol-by-volume. If both forms of alcohol content are shown, the optional statement in degrees of proof shall be placed in parentheses, in brackets, or otherwise distinguished from the mandatory statement in percent-alcohol-by-volume to emphasize the fact that both expressions of alcohol content mean the same thing.

(b) *Tolerances*. The following tolerances shall be allowed (without affecting the labeled statement of alcohol content) for losses of alcohol content occurring during bottling:

(1) Not to exceed 0.25 percent alcohol by volume for spirits containing solids in excess of 600 mg per 100 ml; or

(2) Not to exceed 0.25 percent alcohol by volume for any spirits product bottled in 50 or 100 ml size bottles; or

(3) Not to exceed 0.15 percent alcohol by volume for all other spirits.

(Approved by the Office of Management and Budget under Control Number 1512-0482)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1394, as amended (26 U.S.C. 5301(a)); 49 Stat. 917, as amended (27 U.S.C. 205(e)))

[T.D. ATF-237, 51 FR 36394, Oct. 10, 1986, as amended by T.D. ATF-288, 54 FR 47769, Nov. 17, 1989]

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§ 5.38 Net contents.

(a) *Bottles conforming to metric standards of fill*. The net contents of distilled spirits shall be stated in the same manner and form as set forth in the standards of fill in § 5.47a.

(b) *Bottles not conforming to the metric standards of fill*. The net contents for distilled spirits bottled before January 1, 1980, in bottles not conforming to the metric standards of fill, shall be stated in the same manner and form as set forth in § 5.47(a), except for cordials and liqueurs, cocktails, highballs, bitters and specialties, as specified by the Administrator. The net contents for these specialty products shall be stated in U.S. measure (i.e., gallons, quarts, pints, fluid ounces).

(c) *Net contents marked in bottles*. The net contents need not be marked on any label if they are legibly blown, etched, sandblasted, marked by underglaze coloring, or otherwise permanently marked by any method approved by the appropriate TTB officer on the side, front, or back of the container in an unobscured location. Containers of 200 ml or greater capacity shall bear letters and figures of not less than one-quarter inch height.

(d) *Qualifying statements*. Words or phrases qualifying statements of net contents are prohibited.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. ATF-146, 48 FR 43321, Sept. 23, 1983, as amended by T.D. ATF-249, 52 FR 5956, Feb. 27, 1987]

§ 5.39 Presence of neutral spirits and coloring, flavoring, and blending materials.

(a) *Neutral spirits and name of commodity*. (1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: “_____ % neutral spirits distilled from _____ (insert grain, cane

products, or fruit as appropriate)); or “_____ % neutral spirits (vodka) distilled from _____ (insert grain, cane products, or fruit, as appropriate)); or “_____ % grain (cane products), (fruit) neutral spirits”, or “_____ % grain spirits.”

(2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin have been distilled. The statement of the name of the commodity shall be made in substantially the following form: “Distilled from grain”, or “Distilled from cane products”, or “Distilled from fruit”.

(b) *Coloring materials.* The words “artificially colored” shall be stated on the label of any distilled spirits containing synthetic or natural materials which primarily contribute color, or when the label conveys the impression that the color is derived from a source other than the actual source, except that:

(1) If no coloring material other than natural flavoring material has been added, there may be stated in lieu of the words “artificially colored” a truthful and adequate statement of the source of the color;

(2) If no coloring material other than those certified as suitable for use in foods by the Food and Drug Administration has been added, there may be stated in lieu of the words “artificially colored,” the words “certified color added”; and

(3) If no coloring material other than caramel has been added, there may be stated in lieu of the words “artificially colored,” the words “colored with caramel,” or a substantially similar statement, but no such statement is required for the use of caramel in brandy, rum, or tequila, or in any type of whisky other than straight whisky.

(c) *Treatment with wood.* The words “colored and flavored with wood _____ (insert chips, slabs, etc., as appropriate)” shall be stated as a part of the class and type designation for whisky and brandy treated, in whole or in part, with wood through percolation, or otherwise, during distillation or storage, other than through contact with the oak container. *Provided*, that the above

statement shall not apply to brandy treated with an infusion of oak chip in accordance with § 5.23(a).

[T.D. 720, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-94, 46 FR 55097, Nov. 6, 1981; T.D. ATF-292, 55 FR 1065, Jan. 11, 1990]

§ 5.40 Statements of age and percentage.

(a) *Statements of age and percentage for whisky.* In the case of straight whisky bottled in conformity with the bottled in bond labeling requirements and of domestic or foreign whisky, whether or not mixed or blended, all of which is 4 years old or more, statements of age and percentage are optional. As to all other whiskies there shall be stated the following:

(1) In the case of whisky, whether or not mixed or blended but containing no neutral spirits, the age of the youngest whisky. The age statement shall read substantially as follows: “_____ years old.”

(2) In the case of whisky, containing neutral spirits, if any of the straight whisky and/or other whisky is less than 4 years old, the percentage by volume of straight whisky and/or other whisky, and the age of the straight whisky (the youngest if two or more) and the age of such other whisky (the youngest if two or more). If all the straight whisky and/or other whisky is 4 years or more old, the age and percentage statement for such whiskies is optional. The age and percentage statement for straight whiskies and/or other whisky, whether required or optional, shall be stated in immediate conjunction with the neutral spirits statement required by § 5.39, and shall read substantially as follows:

(i) If only one straight whisky and no other whisky is contained in the blend: “_____ percent straight whisky _____ years old.”

(ii) If more than one straight whisky and no other whisky is contained in the blend: “_____ percent straight whiskies _____ years or more old.” The age blank shall be filled in with the age of the youngest straight whisky. In lieu of the foregoing, a statement may be made of the ages and percentages of each of the straight whiskies contained in the blend: “_____ percent straight whisky _____ years old, _____ percent

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straight whisky ____ years old, and ____ percent straight whisky ____ years old.”

(iii) If only one straight whisky and one other whisky is contained in the blend: “____ percent straight whisky ____ years old, ____ percent whisky ____ years old.”

(iv) If more than one straight whisky and more than one other whisky is contained in the blend: “____ percent straight whiskies ____ years or more old, ____ percent whiskies ____ years or more old.” The age blanks shall be filled in with the ages of the youngest straight whisky and the youngest other whisky. In lieu of the foregoing, a statement may be made of the ages and percentages of each of the straight whiskies and other whiskies contained in the blend: “____ percent straight whisky ____ years old, ____ percent straight whisky ____ years old, ____ percent whisky ____ years old, and ____ percent whisky ____ years old.”

(3) In the case of imported whiskies described in §5.22(1), Class 12, the labels shall state the ages and percentages in the same manner and form as is required for the same type of whisky produced in the United States.

(4) Notwithstanding the foregoing provisions of this paragraph, in the case of whisky produced in the United States and stored in reused oak containers, except for corn whisky, and for light whisky produced on or after January 26, 1968, there shall be stated in lieu of the words “____ years old” the period of storage in reused oak containers as follows: “____ stored ____ years in reused cooperage.”

(5) Optional age statements shall appear in the same form as required age statements.

(b) *Statements of age for rum, brandy, and Tequila.* Age may, but need not, be stated on labels of rums, brandies, and Tequila, except that an appropriate statement with respect to age shall appear on the brand label in case of brandy (other than immature brandies and fruit brandies which are not customarily stored in oak containers) not stored in oak containers for a period of at least 2 years. If age is stated, it shall be substantially as follows: “____ years old”; the blank to be filled in with the

age of the youngest distilled spirits in the product.

(c) *Statement of storage for grain spirits.* In case of grain spirits, the period of storage in oak containers may be stated in immediate conjunction with the required percentage statement; for example, “____% grain spirits stored ____ years in oak containers.”

(d) *Other distilled spirits.* Age, maturity, or similar statements or representations as to neutral spirits (except for grain spirits as stated in paragraph (c) of this section), gin, liqueurs, cordials, cocktails, highballs, bitters, flavored brandy, flavored gin, flavored rum, flavored vodka, flavored whisky, and specialties are misleading and are prohibited from being stated on any label.

(e) *Miscellaneous age representations.* (1) Age may be understated but shall not be overstated.

(2) If any age, maturity, or similar representation is made relative to any distilled spirits (such representations for products enumerated in paragraph (d) of this section are prohibited), the age shall also be stated on all labels where such representation appears, and in a manner substantially as conspicuous as such representation: *Provided*. That the use of the word “old” or other word denoting age, as part of the brand name, shall not be deemed to be an age representation: *And provided further*, That the labels of whiskies and brandies (except immature brandies) not required to bear a statement of age, and rum and Tequila aged for not less than 4 years, may contain general inconspicuous age, maturity or similar representations without the label bearing an age statement.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-62, 44 FR 71621, Dec. 11, 1979; T.D. ATF-198, 50 FR 8464, Mar. 1, 1985]

§5.41 Bottle cartons, booklets and leaflets.

(a) *General.* An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement,

design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 5.31 through 5.42 on labels.

(b) *Sealed opaque cartons.* If bottles are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than shipping containers), such coverings, cartons, or other containers must bear all mandatory label information.

(c) *Other cartons.* (1) If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable, it may display any information which is not in conflict with the label on the bottle contained therein.

(2) Cartons displaying brand names and/or designations must display such names and designations in their entirety—brand names required to be modified, e.g. by “Brand” or “Product of U.S.A.”, must also display such modification.

(3) Specialty products for which a truthful and adequate statement of composition is required must display such statement.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-36, 41 FR 47426, Oct. 29, 1976]

§ 5.42 Prohibited practices.

(a) *Statements on labels.* Bottles containing distilled spirits, or any labels on such bottles, or any individual covering, carton, or other container of such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's product.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate TTB offi-

cer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this paragraph shall not apply to the use of the name of any person engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(b) *Miscellaneous.* (1) Labels shall not be of such design as to resemble or simulate a stamp of the U.S. Government or any State or foreign government. Labels, other than stamps authorized or required by this or any other government, shall not state or indicate that the distilled spirits are distilled, blended, made, bottled, or sold under, or in accordance with, any municipal, State, Federal, or foreign authorization, law, or regulations, unless such statement is required or specifically authorized by Federal, State, municipal, or foreign law or regulations. The statements authorized by this part to appear on labels for domestic distilled spirits are “Distilled (produced, barreled, warehoused, blended, or bottled, or any combination thereof, as the case may be) under United States (U.S.)

Government supervision”, or in the case of distilled spirits labeled as bottled in bond, “Bottled in bond under United States (U.S.) Government supervision”. If the municipal, State, or Federal Government permit number is stated on a label, it shall not be accompanied by any additional statement relating thereto.

(2) If imported distilled spirits are covered by a certificate of origin or of age issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statement relating thereto. The reference to such certificate or certification shall, in the case of Cognac, be substantially in the following form: “This product accompanied at the time of importation by an ‘Acquit Regional Jaune d’Or’ issued by the French Government, indicating that this grape brandy was distilled in the Cognac Region of France”; and in the case of other distilled spirits, substantially in the following form: “This product accompanied at time of importation by a certificate issued by the _____ government (name of government) indicating that the product is _____ (class and type as required to be stated on the label), and (if label claims age) that none of the distilled spirits are of an age less than stated on this label.”

(3) The words “bond”, “bonded”, “bottled in bond”, “aged in bond”, or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of domestic distilled spirits unless the distilled spirits are:

(i) Composed of the same kind of spirits produced from the same class of materials;

(ii) Produced in the same distilling season by the same distiller at the same distillery;

(iii) Stored for at least four years in wooden containers wherein the spirits have been in contact with the wood surface except for gin and vodka which must be stored for at least four years in wooden containers coated or lined with paraffin or other substance which will preclude contact of the spirits with the wood surface;

(iv) Unaltered from their original condition or character by the addition or subtraction of any substance other than by filtration, chill proofing, or other physical treatments (which do not involve the addition of any substance which will remain incorporated in the finished product or result in a change in class or type);

(v) Reduced in proof by the addition of pure water only to 100 degrees of proof; and

(vi) Bottles at 100 degrees of proof.

In addition to the requirements of §5.36(a) (1) or (2), the label shall bear the real name of the distillery or the trade name under which the distillery produced and warehoused the spirits, and the plant (or registered distillery) number in which produced; and the plant number in which bottled. The label may also bear the name or trade name of the bottler.

(4) The words “bond”, “bonded”, “bottled in bond”, “aged in bond”, or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of imported distilled spirits unless the distilled spirits meet in all respects the requirements applicable to distilled spirits bottled for domestic consumption, so labeled, and unless the laws and regulations of the country in which such distilled spirits are produced authorize the bottling of distilled spirits in bond and require or specifically authorize such distilled spirits to be so labeled. All spirits labeled as “bonded”, “bottled in bond”, or “aged in bond” pursuant to the provisions of this paragraph shall bear in direct conjunction with such statement and in script, type, or printing substantially as conspicuous as that used on such statement, the name of the country under whose laws and regulations such distilled spirits were so bottled.

(5) The word “pure” shall not be stated upon labels unless:

(i) It refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about that ingredient; or

(ii) It is part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled; or

(iii) It is part of the bona fide name of the permittee who bottled the distilled spirits.

(6) Distilled spirits shall not be labeled as “double distilled” or “triple distilled” or any similar term unless it is a truthful statement of fact; except that “double distilled” or “triple distilled” shall not be permitted on labels of distilled spirits produced by the redistillation method when a second or third distillation step is a necessary distillation process for the production of the product.

(7) Labels shall not contain any statement, design, device, or pictorial representation which the appropriate TTB officer finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(8) *Health-related statements*—(i) *Definitions*. When used in this paragraph (b)(8), terms are defined as follows:

(A) *Health-related statement* means any statement related to health (other than the warning statement required by § 16.21 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psycho-

logical sensation results from consuming the distilled spirits, as well as statements and claims of nutritional value (e.g., statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(B) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the distilled spirits, alcohol, or any substance found within the distilled spirits, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between distilled spirits, alcohol, or any substance found within the distilled spirits, and a disease or health-related condition.

(C) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption.

(ii) *Rules for labeling*—(A) *Health-related statements*. In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(B) *Specific health claims*. (1) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a distilled spirits label. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on a distilled spirits label.

(2) TTB will approve the use of a specific health claim on a distilled spirits label only if the claim is truthful and adequately substantiated by scientific

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or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(C) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption is presumed misleading unless it—

(1) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of distilled spirits or alcohol consumption; and

(2)(i) Includes as part of the health-related directional statement the following disclaimer: “This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;” or

(ii) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-62, 44 FR 71621, Dec. 11, 1979; T.D. ATF-180, 49 FR 31673, Aug. 8, 1984; 49 FR 35768, Sept. 12, 1984; T.D. ATF-198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985; TTB T.D.-1, 68 FR 10104, Mar. 3, 2003]

Subpart E—Standards of Fill for Bottled Distilled Spirits

§ 5.45 Application.

No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein or remove from customs custody any distilled

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spirits in bottles unless such distilled spirits are bottled and packed in conformity with §§ 5.46 through 5.47a.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. ATF-25, 41 FR 10221, Mar. 10, 1976; T.D. ATF-146, 48 FR 43321, Sept. 23, 1983]

§ 5.46 Standard liquor bottles.

(a) *General.* A standard liquor bottle shall be one so made and formed, and so filled, as not to mislead the purchaser. An individual carton or other container of a bottle shall not be so designed as to mislead purchasers as to the size of the bottles.

(b) *Headspace.* A liquor bottle of a capacity of 200 milliliters or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the bottle after closure.

(c) *Design.* A liquor bottle shall be held (irrespective of the correctness of the stated net contents) to be so made and formed as to mislead the purchaser, if its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

(d) *Exceptions—(1) Distinctive liquor bottles.* The headspace and design requirements in paragraphs (b) and (c) of this section do not apply to liquor bottles that are specifically exempted by the appropriate TTB officer, pursuant to an application filed by the bottler or importer.

(2) *Cross reference.* For procedures regarding the issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-25, 41 FR 10221, Mar. 10, 1976; 41 FR 11022, Mar. 16, 1976; T.D. ATF-62, 44 FR 71622, Dec. 11, 1979; T.D. ATF-146, 48 FR 43321, Sept. 23, 1983; T.D. ATF-406, 64 FR 2129, Jan. 13, 1999]

§ 5.47 Standards of fill (distilled spirits bottled before January 1, 1980).

(a) *Authorized standards of fill.* The standards of fill for all distilled spirits,